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THE MADRAS BAR COUNCIL.

We publish below the report of the Bar Council on the working of the Bar Councils Act in Madras since the inauguration of the Madras Council in 1928. It was placed before a conference of representative members of the profession convened by the Council itself and, in opening that Conference, the Advocate-General delivered an impressive address reviewing the position and explaining the main purpose of the Conference. As was to be expected, the report as well as the address drew attention prominently to certain aspects of the working of the Act, especially in connection with the exercise of disciplinary jurisdiction, and some of the resolutions of the Conference deal with this subject. We have no doubt that most of these resolutions will commend themselves to the profession as well as to the public. It will be in consonance with the policy underlying the Bar Councils Act that in the matter of dealing with alleged cases of professional misconduct, the Council should be not merely a reporting authority but the deciding authority as well. We, however, deem it our duty to point out that the Council as well as the profession will best serve their interests not by resenting outside scrutiny of their professional conduct but by so fixing their standard of conduct and judgment as to be beyond cavil or criticism. From time to time the profession is reminded of the difference between its estimate of itself and the public estimate of it and let it not be said even by the most carping critic that the members of the profession are disposed to be far too lenient towards their erring brethren. From this point of view, it seems preferable to secure finality to the verdict of the Bar Council in disciplinary matters, not by a statutory rule *excluding* the jurisdiction of the High Court but, by the growth of a convention according to which the High Court

will deservedly respect the decision of that Tribunal. Resolution No. 6 complaining against the entrustment of such enquiries to a District Judge seems to us rather misconceived. Under the Act, a case can be so referred only *after consultation with the Bar Council* and the Select Committee explained this provision as inserted only on grounds of convenience "as a tribunal of the Bar Council will not in all cases be in a position to enquire satisfactorily into matters which have occurred in the mofussil." We, have no reason to think that any such reference will be made *against* the wishes of the Bar Council. In any event, it may be desirable if not sufficient to provide that the report of any such enquiry shall be forwarded to the Bar Council itself, to be dealt with by it as if on an enquiry made by a Committee of the Council itself. There is much to be said in favour of the suggestion that when an Advocate is charged with a criminal offence, the matter should in the first instance be taken before the ordinary criminal courts of the land; but it must be understood that an acquittal there will not preclude proceedings under the disciplinary jurisdiction, if the acquittal is based on grounds that do not negative moral turpitude.

It may not be out of place if we refer here to a feeling of disappointment in some quarters that it has not been possible for the Conference to deal with many other topics. Against such disappointment, it may be pointed out that the Conference was not a general gathering of lawyers assembled to deal with all questions in which the profession is interested but a representative body convened by the Bar Council for certain stated purposes. We would, however, emphasise the desirability of the Bar Council putting itself in closer touch with Bar Associations in the mofussil and eliciting their views and suggestions on all important questions as and when they arise. Materials thus collected from time to time may be conveniently placed before special conferences with a greater certainty that all aspects of a question are likely to have been considered at leisure and with due deliberation.

Opening the Conference, the Advocate-General said:

On behalf of the Members of the Bar Council, I deem it a great privilege to extend a most cordial welcome to the Members assembled in this Conference representing various associations in the mofussil and in the metropolis. This is the first occasion on which a conference of this kind meets after the Indian Bar Councils Act was passed. With all its defects and

imperfections the Act is a genuine attempt to unify the Bar in each one of the provinces of India, recognising the claims of the Bar as a confraternity of a learned and honourable profession to regulate the discipline of its own members, to lay down rules of conduct and etiquette for the guidance of its members, the conditions of entry into the profession and to set the right standards of legal education and training in order that the members of the legal profession might efficiently discharge their duties to their clients, to the Court, and towards the public.

The epoch closing with the Bar Councils Act is a period of no mean achievement of the Indian Bar. The Bar in the different provinces of India may not be able to claim the hoary traditions of the English Bar but within the comparatively short period of its history, since the implanting of British legal institutions into this country, there can be no gainsaying that it has played a great. honourable and a distinguished part in the evolution of the legal institutions of this country and of its legal system.

We can easily re-call names among the members of the Indian Bar who, in point of legal erudition, forensic eminence, and skill in the art of advocacy, are not behind some of the great names which have adorned the English Bar.

The Bar in our own province is not likely to suffer by comparison with the Bar in the rest of India. Mr. Eardley Norton, one of the ablest advocates of the Madras High Court, in his reminiscences, has paid a most eloquent tribute to some of the great leaders of the profession in Madras, who had made the reputation for Madras.

Sir V. Bhashyam's eminence in the profession is rightly looked upon by the Madras Bar as a part of its heritage and is a living tradition with it. The Mofussil Bar can be as much proud of the achievements of Sir S. Subramania Aiyar, his versatility and his genius, as the Madras Bar. In my own time it has been my proud privilege to come in contact with some of the greatest personalities of this Bar. In my early days at the Bar, I used to stand dazzled by the forensic eloquence of Mr. V. Krishnaswami Aiyar, the directness and force of Mr. P. R. Sundara Aiyar's advocacy which in the language of a late Chief Justice of this Court now in the Judicial Committee, reminded people of Sir Charles Russell; the quickness, penetrating intelligence, the matchless skill and adroitness of Sir K. Srinivasa Aiyangar, not to mention the great ability and resourcefulness of some of the leaders of the Bar who are still happily with us.

On the bench, the members of the Indian Bar have distinguished themselves in such a manner as to compel the admiration and the encomiums of the Judicial Committee on several occasions. They have enriched the Indian jurisprudence and made it a living system and not a feeble replica of the English system. Great Judges of the type of Sir Bhashyam and Sir Subramania Aiyar, Nanabhai Haridas, Dwarkanath Mitter, Gurudass Banerjee and Sir Ashutosh Mukerjee, Telang and Ranade, and Mahmood of Allahabad, are men of whom any country may well be proud. I am not mentioning Sir T. Muthuswami Aiyar, as he was technically not of the Bar. The members of the Bar have filled high offices of State with credit and distinction and recently members of the Indian Bar have been elected to the Judicial Committee.

Quite in keeping with the traditions of the Bar in other countries, the Bar in India has played no mean part in the movement for Indian freedom, and in the constitutional and political progress of this country. In the legislatures of the country, the Indian lawyer has exhibited a remarkable debating and parliamentary skill, though success in the forensic field is by no means a true measure or indication of one's success as a parliamentarian. Fortunately in India the experiment was not tried as in England once of excluding lawyers from the legislatures which earned the Parliament from which lawyers were excluded the unenviable reputation of being called "unlearned". The Indian lawyer has shown his capacity for statesmanship and settlement of national questions and has proved himself to be equally at home at conferences, negotiations and national diplomacy as in forensic advocacy. Sir T. B. Sapru and the other great lawyers of India that took part in the Round Table Conference have rendered a great and signal service to their country in this direction. The future India need not therefore despair of producing lawyers who can think in terms of society, the State, the nation, and the commonwealth.

BROTHER MEMBERS OF THE BAR.—This Conference has been mainly convened with a view to take stock of the working of the Bar Councils Act for the last 3 years in this presidency and to enable the members of the Bar to suggest any remedies for removing the defects or for improving the existing machinery. As we are meeting on the eve of great constitutional changes and of the "birth of a new State," to use the significant phraseology of the Lord Chancellor of England, we owe it to ourselves to make our suggestions to His Majesty's Govern-

ment and the countries' representatives at the Round Table Conference in regard to the re-organisation of the judicial system as a part of the governmental structure.

In all civilised countries at the present day, and especially in countries permeated by British jurisprudence, the efficiency of State machinery is rightly judged with reference to the principles on which justice is administered. The judiciary is alike the bulwark of the freedom of the individual as of the security of the State.

The subjects which are set down in the agenda will give you an idea of the problems on which you are called upon to give your considered opinion. Under the Bar Councils Act, as you are aware, *ad hoc* tribunals are constituted for the consideration of particular causes or complaints. The rules for regulating the procedure before the tribunal are made by the High Court. Opinion has been expressed in some quarters that the procedure so laid down in regard to the inquiry before the tribunal, though conceived of as being in the interest of the practitioner, tends to prolong the inquiry and is too complicated. It is for you to consider whether consistently with the principle that the proceedings against a practitioner are of a quasi-criminal character, it is possible to devise a simpler, more elastic and easy procedure.

Again, there is a feeling in professional circles that there is no justification for the tribunals of the Bar Council consisting as they do, generally, of eminent lawyers serving merely as repertoires to the High Court I have heard it said that the function assigned to the Bar tribunals is not consistent with the dignity of the profession and with the autonomy of the Bar. On the other side it is urged with equal force that as an advocate has a right to plead and act, the practitioner is an officer of the Court and the ultimate and residuary jurisdiction should necessarily vest in the Court. It is for you to consider whether it is possible or necessary to suggest any appropriate amendment to the existing enactment in regard to the sphere of functions of the Bar Tribunals and the High Court.

Questions have also been raised as to the extent or degree to which the conduct of a hearing has to be entrusted to a complainant and the exact sphere of duty of the Tribunal of the Bar Council, in cases where the complainant does not choose to prosecute his complaint as also in the matter of the safeguards against frivolous complaints being lodged against prac-

titioners which may have the effect of an undue publicity and loss of reputation which might ruin the career of a practitioner.

Under the Indian Bar Councils Act, the Bar Council has the right, with the previous sanction of the High Court, to make rules to regulate the admission of persons to practise in the High Court, provide for the qualification to be possessed by persons applying for admission as advocates and the conditions subject to which advocates of other High Courts may be entitled to practise in the High Court. The Council is also entrusted with the jurisdiction to make rules, subject to the sanction of the High Court, regulating the rights and duties of the advocates and their discipline and professional conduct. It may be a question for consideration as to how far it is necessary to have the previous sanction of the High Court in the matter of all these rules and whether it is not enough that the High Court is invested with the jurisdiction to veto any particular rule or classes of rules which may have the effect of interfering with the powers and duties of the High Court.

The Council is also expected to take upon itself the duty of giving facilities for legal education and conducting examinations under its auspices. Section 15 of the Act provides in terms that the Bar Council may, with the sanction of the High Court, make rules for the giving of facilities for legal education and training and for the holding and conduct of examinations and the charging of fees in respect of the education provided or for the right to appear for the examinations held by the Bar Council.

It is common knowledge that both in England and the Dominions the control of legal education and the testing of the fitness of people for entrance into the profession has always been in the hands of the profession. It has always been thought that the interests alike of academic studies and of fitness for the profession demanded a differentiation between University legal studies and instruction in a course of law for testing the fitness as to admission into the profession.

On account of historic accidents and the absence of a trained body of lawyers in the early years of British Indian rule, the course of legal studies has naturally assumed a different direction in India. The framers of the Bar Councils Act were evidently influenced by the consideration that the time has come for the parting of the ways. It is for you, gentlemen, to consider whether in the interests of sound legal education and of efficiency it is desirable for the Bar Council to prescribe

any special tests or undertake the duty of imparting legal education to any extent. The problem is one which bristles with difficulties. If it were possible for the Council to take over the administration of the Law College, our way might be rendered smooth. But for that, we have to count on the consent of the Government and the University authorities. The question of an independent course of instruction without reference to the existing college or the University authorities, though theoretically possible, will resolve itself ultimately to one of finance.

The report, which the secretary has placed before you, will give you an idea of our exact financial position. With a view to enable us to discharge our statutory duties efficiently, we made an appeal to the Government for financial assistance, but we are sorry to say that the appeal has not met with any response.

Even in such a matter as the expenses in connection with the conduct of proceedings before the Bar Tribunal where the necessary professional assistance was not placed before the Court, the Bar Council felt considerable difficulties, but as the result of a deputation to the High Court, the Council is glad to say, that the matter has received the sympathetic consideration of His Lordship the Chief Justice, and the High Court has so amended the rules as to relieve the Bar Council of this burden. Our thanks are due to the High Court and to the learned Chief Justice.

The Council is no doubt entitled to charge fees with the sanction of the High Court in respect of enrolment and may levy the fees contemplated in section 15 (*d*). But the profession can easily realise how far it can use its power in this respect. There is a feeling that already the member entering the profession is overtaxed, in that he has to pay a heavy enrolment fee of Rs. 625 and that is why the Council felt there was no justification to demand more than Rs. 50 in respect of an admission. We wish the Government would see their way to paying us a portion of Rs. 625. In spite of our financial position, the Council has undertaken the institution of a special course of lectures in subjects which are not included in the curricula of studies for the B.L. Degree examination.

Gentlemen, it is for the profession to deeply consider the problem whether, even if a regular and complete course of legal education cannot be undertaken at this stage by the Bar Council, it is not feasible to devise special tests for entrance into the profession.

I would only take a few minutes of your time on the subject of the re-organisation of the judiciary which is the other important subject in the agenda before you. Professional opinion in India is unanimous that there ought to be an immediate separation of the executive and judicial functions in the new dispensation. The majority of the Services Committee in the Round Table Conference were for the elimination of the civilian element in the constitution of the judiciary. There is a strong body of opinion in favour of the view that the present constitution of the High Court is an anomaly and an anachronism.

As you are all aware, its heterogeneous composition is due to historical accidents. When the first High Courts were established, the Indian Bar had not attained anything like its present dimensions and did not command anything like the prestige it commands to-day. There was a sharp difference between the methods of judicial administration in the metropolis and in the mofussil. Even the law applied to the settlement of the disputes between party and party was not the same in the mofussil as in the metropolis. The era of codification had just commenced. The fusion between the Supreme and the Sudder Courts had just been accomplished. To secure the efficiency of the new tribunals (High Courts) that were established, it was felt necessary to secure a minimum proportion of the civilian element and the barrister element in its composition.

The civilian was expected to make his contribution by bringing to bear upon the work of the High Court, his wide knowledge of local and mofussil conditions, his training as a judge and an administrator and his knowledge of the vernaculars of the country gained in the early years of his career.

The barrister was expected to impart a freshness of outlook and independence and to enrich Indian jurisprudence with the aid of the ever-fertile source of English law and equity.

The constitution also provided for the High Court being presided over by a barrister as Chief Justice. Recruitment from the indigenous Bar and the provincial judiciary was optional and was left to the enabling clause. It needs no argument to convince any one that there is absolutely no justification for the perpetuation of the present constitution. Conditions have completely changed and we are living, as it were, in a new world. The Indian Bar is not behind the Dominion or even the English Bar and there is absolutely no reason why the principle of the recruitment to the highest court from the ranks solely of the Bar which has added to the prestige of the

judiciary in every part of the British Commonwealth should be departed from in India.

In pressing the case for the Bar, I am not unmindful of the fact that since the establishment of the High Court, we have had several able and efficient Judges on the High Court from the ranks of the Civil Service and Judges like Sir R. West and Holloway have also made great contributions to our jurisprudence. I need hardly say that I yield to none in my respect for some of our present day civilian judges.

Even if there is any room for difference of opinion as regards the recruitment solely from the Bar, there is no room consistently with the accepted principle of recruitment to the highest court with the sole and single eye to efficiency, for the perpetuation of any rigid rule of proportion, or for imposing any disability on any member of the Indian Bar from becoming a Chief Justice. The Bar has every right to feel that the present constitution is a slur on its capacity and its attainments. The Bar Council and the Madras Advocates Association have already expressed themselves very strongly in favour of a thorough change in the constitution and composition of the High Court and have sent their representations to the authorities and to some of the lawyer members at the Round Table Conference. We trust and hope that the Indian delegation would see to our recommendations being carried out.

It is now agreed on all hands that the future constitution of India should be federal and the Indian State should be composite in its character. Federalism implies a definition and demarcation of the functions and powers of the several units composing the composite structure. The constitution of a Supreme Court with power to settle inter-statal or inter-provincial disputes, to pronounce finally on the constitutionality or otherwise of the enactments of the provincial, central or federal legislatures is therefore a practical problem awaiting solution at the hands of our constitutional experts. In regard to a court acting as an arbitrator between States, Governments and Legislatures and the extent and degree to which a court has to be invested with jurisdiction in this behalf, gentlemen, you are aware that there is a sharp difference of opinion among political thinkers.

On the one hand, it is urged that to invest a court with a plenary jurisdiction in these matters would be practically to transfer political power in a democratic state from the people's representatives to a body of judges trained in legal formula and legal ideas and that you cannot always be sure of having Mar-

shalls to regulate the working of the constitution and thereby decide the destiny of the State. On the other side it is urged with equal force that if the instrument of Government is to provide for a composite structure, is to define and demarcate functions between the component units, a judicial determination of the respective spheres of functions is an inevitable concomitant of federalism.

The investing of the jurisdiction in a Supreme Court in constitutional matters might raise the further point as to how far the normal functions exercised by tribunals in countries governed by a written constitution in the course of an ordinary litigation on their being called upon to decide on the *ultra vires* or *intra vires* character of the legislation is to be encroached upon or to be inter-related to the constitutional functions of the Supreme Court. The question has also to be considered as to whether it is advisable to drop altogether the system obtaining under the present constitution, of constituting the Governor-General or the Governor as the sole arbiter in regard to certain constitutional matters. In regard to the Supreme Court functioning as an inter-statal tribunal, the nature of its jurisdiction may not be of the same character in regard to inter-statal (meaning thereby between two Native States) and in regard to disputes inter-provincial, or between province and a State.

Again in dealing with inter-statal disputes, the subject of what constitutes justiciable disputes, which by no means is an easy matter, may assume importance and the question will have to be considered as to how far matters which come now under the head of paramountcy should be brought under the jurisdiction of the Supreme Court.

These are some of the problems which await solution at the hands of our constitutional experts. Above all, the prestige which the court will command will depend upon the principles on which the court is constituted. Is it too much to hope that, if such a tribunal is to be established for the whole of the Indian Continent, its constitution will provide for the court being recruited on the principles on which the world court is constituted under the League Covenant? If that is done, I am full of hope that the Indian Supreme Court will command the respect and the prestige which the U. S. Supreme Court deservedly commands.

Before I close my remarks I would allude to one or two points which have cropped up as a result of the suggestions made by the mofussil members of the Bar. I would request the

Conference to consider the desirability of having a Council of Law Reporting on the lines of the Incorporated Council of Law Reporting established as early as 1864 in England. In regard to representation of the mofussil members in the Bar Council, may I throw out a suggestion that it will be much better to leave it to some kind of convention rather than have a special statutory provision in that behalf. I wish that the Council had been in a position to arrange a Conference of all the lawyers of the Presidency but considerations of business expediency had compelled them to have recourse to the procedure of inviting representatives of associations both in the city and the mofussil. The Council appeal to the members of the Bar to accept the procedure in the right spirit. The Bar Council being a statutory body representing the advocates of the Presidency felt constrained to invite only advocates to the Conference and regretted very much that they were not in a position to extend their invitation to the pleader members of our profession. The Council also take this opportunity of requesting all the members of the mofussil Bar, eligible to become advocates, to become such forthwith.

REPORT.

The Indian Bar Councils Act was brought into force with respect to the High Court of Judicature at Madras by the notification of the Government of India, dated the 27th March, 1928, with effect from 16th July, 1928. The first rules of the Bar Council relating to the election of its members and the transaction of its business were made by the High Court on 4th August, 1928. According to the proviso to section 4 of the Act the Advocate-General, Madras, is the Chairman ex-officio of the Bar Council. Of the remaining 14 members 10 were elected on 22nd September, 1928 and four were nominated by the High Court on 29th September, 1928. The Bar Council met for the first time on 9th October, 1928, when the late Sir Murray Coutts-Trotter, the then Chief Justice, opened the proceedings with an address of welcome to which the Advocate-General made a reply.

The Bar Council has a number of duties to discharge under the Act and it had to equip itself with the necessary means to perform them satisfactorily. The Registrar of the High Court was requested to give one of the rooms of the High Court to the Bar Council to have its office and he with the sanction of the Chief Justice was so good as to comply with the request. For this and other similar acts the Bar Council desires to express its sense of gratitude. A certain amount of preliminary work had to be

done before the Bar Council could actually begin to function. A Committee was appointed to go into the financial position of the Bar Council and to make proposals about the appointment of the staff necessary to carry on the work of the Bar Council. Another Committee was appointed to frame rules under sections 8 and 15 of the Act regarding the qualifications which would entitle persons to be enrolled as advocates, and the conditions under which advocates on the roll of other High Courts in India, may, in special cases, be permitted to appear in our High Court. Accepting the recommendations of the Budget Committee the Bar Council resolved to have a full-timed Secretary to be in charge of its office and accordingly the Secretary was appointed in December, 1928. In the meantime, the Rules Committee had framed the draft rules which were considered by the Bar Council and were after approval placed before the High Court for sanction. Care was taken to include in these rules a provision which would enable the different classes of legal practitioners to be enrolled as advocates. The case of second grade pleaders however was left out as the High Court had long ago ceased to give second grade pleaders' certificates and as the class of second grade pleaders would in the course of time become extinct. The High Court made a few alterations in the rules proposed and sanctioned them in April, 1929, so that they might come into force with effect from 16th July, 1929. The Bar Council could not in the interests of the profession agree to some of the modifications made by the High Court nor to its being saddled with the onerous task of conducting the examinations for articled clerks of the High Court as a condition precedent to its getting the conduct of the examination for apprentices into its hands. But as the Bar Council was anxious to start work and as the intervention of the summer vacation would further postpone the final passing of these rules it decided to accept the modifications for the time being and to press for its original proposals later on. Thus though the Act has been in force since July, 1928, the Bar Council began to function actually only after 16th July, 1929.

The business of the Bar Council is transacted ordinarily at one of its meetings, but any particular matter may in the discretion of the Chairman be disposed of by placing it before the members of the Bar Council in circulation. There were in all twelve meetings of the Bar Council and these meetings were held in the Chambers of the Advocate-General as the Bar Council Office was too small for that purpose. The interval between consecutive meetings varied from one to two months, and depended upon the accumulation of work to be placed before the Bar Council for consideration. The imparticability of convening meetings of the Bar Council oftener than it has been possible and the necessity of disposing of certain matters expeditiously required the appointment of the Standing Committees of the Bar Council to deal with matters

relating to (1) discipline, (2) enrolment, (3) examination, and (4) finance. Excepting matters of special difficulty or importance which were referred to the Bar Council, all other matters falling within their respective spheres were finally disposed of by these committees. Besides these standing committees the Bar Council appointed other committees from time to time to deal with particular questions coming up before it for solution.

The following are some of the important matters which came up before the Bar Council for consideration:—

(1) the steps to be taken to do away with different grades of legal practitioners and to have a unified bar;

(2) unlicensed persons regularly practising before Income-tax Officers and Courts and the means to put a stop to the practice;

(3) private vakils appearing in criminal cases;

(4) the statutory provisions relating to the constitution of the High Court Bench and the consequent difficulty in filling up the vacancies occurring in the High Court Bench;

(5) rule of the Rangoon Bar Council in effect denying to the advocates of other High Courts as such, the right to practise even in the subordinate Courts of Burma;

(6) the appointment of more official receivers to ensure quick dispatch of business;

(7) the effect, if any, of the mere insolvency of a lawyer on his right to practise; and

(8) touts and how to meet the evil.

Committees.—The Rules Committee has already been referred to. The Committee appointed to frame rules of professional conduct and etiquette brought forward before the Bar Council a number of rules to be observed by members of the Bar in the discharge of their professional work. These rules were thoroughly discussed by the Bar Council and it was found that with regard to certain questions on this subject it was not possible to lay down a general rule. Such questions were therefore reserved for consideration at a future date and rules were formulated by the Bar Council only in certain matters.

The Discipline Committee of the Bar Council was appointed on 2nd February, 1929, to deal with complaints of misconduct against advocates and also other matters regarding the professional etiquette. These matters had till then been referred to the Professional Etiquette Committee or reserved for consideration at a meeting of the Bar Council. The Committee met in all 26 times and disposed of 26 complaints, 50 applications for permission to be directors of joint stock companies and 13 letters requesting the

opinion of the Bar Council on specified questions. In six of the complaints the facts were such as to call for an enquiry and they were accordingly forwarded to the High Court. In 13 others the advocates concerned were able to give a satisfactory explanation and no further action was deemed necessary. Three of the complaints were withdrawn by the complainants which they were permitted to do as the Committee was satisfied that the withdrawals were made *bona fide* and not in collusion with the advocate with intent to avoid an enquiry. The remaining four complaints were returned as the practitioners complained against were not advocates. Permission to be a director of a joint stock concern was granted in all excepting five cases and these five were referred to the Bar Council for disposal. In most of these cases in which permission was granted the business concerned was a bank and the advocate's remuneration as a director was quite nominal. Of the other five cases permission was granted in three but refused in two, in one of which the advocate sought permission to be a district inspector of a certain tea company and in the other the objects for which the company was formed appeared to be questionable. The questions which came up before the Committee for opinion have, some of them, been already stated while dealing with the work of the Bar Council. To these may be added the further questions—

(*i*) whether a servant of a Native State, while on leave, is entitled to resume practice as an advocate, if the rules of the State had no objection;

(*ii*) whether the power of the High Court to refer a complaint for enquiry to a District Judge under section 10 of the Act could be exercised after the complaint had been referred to a Tribunal of the Bar Council;

(*iii*) what is the duty of an advocate who is in possession of information directly bearing on a matter under enquiry by the Court.

The Enrolment Committee was appointed on 21st July, 1929, to deal with all matters connected with the admission of persons as advocates. The Committee met 70 times and disposed of 292 applications for enrolment and 85 other applications. The Examination Committee was appointed on 21st July, 1929, to deal with all questions connected with the examinations conducted by the Bar Council. The Bar Council holds twice a year, in the months of April and October, an examination in the Law of Practice and Procedure which every pupil has to pass in order to qualify himself for enrolment as an advocate. The Committee did not think it necessary to make any change in the practice of setting question papers in two parts, one part to be answered without books and the other part to be answered with books. The Committee also held one examination for articled clerks of the High Court

and another has been arranged to be held about the end of this month.

Legal Education.—The Bar Council is seriously handi capped in this respect. In its present financial position it is not possible for it to have a well-equipped library and separate accommodation which are essential requisites if it is to afford facilities for legal study and research. Until its financial prospects are improved the Bar Council has to content itself with what little it can do by arranging for occasional lectures. Even for this purpose it has not sufficient funds. The annual income is only sufficient to meet the working expenses of the Bar Council. Whereas the expenses are bound to increase with the increasing volume of work, the income on the other hand is quite uncertain and may possibly go down. However, an attempt was made to make a beginning with the co-operation of the members of the Bar. Several leading members were requested to deliver lectures to the pupils and most of them readily consented. The Bar Council takes this opportunity to thank all those gentlemen who were good enough to undertake the task at considerable personal inconvenience. In the year 1929-30 a series of eight lectures was delivered on select portions of the two Procedure Codes, Limitation Act and Bankruptcy, and in the present year 1930-31 a series of seven lectures has already been delivered on the two Procedure Codes and a series of lectures on Limitation Act and Bankruptcy is being delivered. Besides these lectures the Bar Council also arranges every year a course of lectures on professional conduct and advocacy. All these are with the permission of the Registrar arranged in the Court rooms outside working hours.

Tribunals.—The High Court if it does not summarily reject a complaint of misconduct against an advocate has to refer it either to a Committee of the Bar Council or to a District Judge for enquiry and report. This Committee called the Tribunal is constituted for each case by the Chief Justice from among the members of the Bar Council and has to consist of not less than three and not more than five members and one of the members so nominated is appointed the President of the Tribunal. Nothing is mentioned in the Act about the special functions, if any, of the President nor what is to happen if there is a difference of opinion among the members of the Tribunal. The Act is not clear as to the exact character of the Tribunal so constituted. The question was raised whether the Tribunal could function in the absence of any one of the members. The Bar Council resolved that it is not desirable that the enquiry should proceed if any member is unable to be present. Again what is to be the actual bearing of the report on the final order in the case? There is no clear provision in the Act to hear the complainant before final orders are passed by the High Court but it has power to make the proper

order as to costs. These are some of the questions requiring decision. A few of these questions arose in some cases and the High Court has decided them in one way or other. Such of the matters as can be made clear by the rules made under the Act have to be so dealt with. Other subjects require statutory amendments.

The High Court has framed rules to regulate the procedure to be followed in enquiries before Tribunals and District Judges. These rules closely follow the procedure in warrant cases in criminal trials, but the advocate concerned is given an option to give evidence as a witness on his behalf. At first, provision had not been made in the rules for cases in which the complainant was unable to prosecute his case on account of poverty or for those cases where there was no complainant and the case was taken up by the High Court without a complaint. When this was brought to the notice of the High Court additional rules were framed which still left one point unsatisfactory. According to these latter rules the expenses of engaging an advocate were to be met by the Bar Council out of its funds and the fee paid by the Bar Council included in the final order for costs made by the High Court. The Bar Council took objection to its being made liable to pay the fee for engaging an advocate as such fee may or may not be finally recovered. The High Court after hearing the contentions of the Bar Council was pleased to amend the rules so that all the expenses of conducting the prosecution of the complaint before the Tribunal will be met by the High Court. It has been considered necessary to dwell at some length on this subject as some of the cases referred to the Tribunals of the [illegible]uncil had a rather protracted trial. In one or two cases there was an additional factor, namely, the Tribunal had not the assistance of an investigating agency like the police in criminal trials.

The total number of cases referred for enquiry were 14 in 1929, 7 in 1930 and 3 in 1931 up till now. In 13 of these cases final orders have been passed by the High Court. Only in one of them did the High Court differ from the report of the majority of the Tribunal acquitting the advocate. In all the other cases the High Court upheld the findings of the Tribunal and passed orders accordingly. Of the rest no order may be necessary in one of them as the advocate concerned has already been struck off the rolls. Out of the remaining ten cases one was allowed to be withdrawn by the High Court and three others are awaiting the final orders of the High Court. In two out of these three the High Court was not satisfied with the reports and so remitted them back to the Tribunals for further enquiry. Final orders have not been passed on the revised reports. There are at present six cases pending before the Tribunals of the Bar Council and it is hoped that these will be disposed of without delay as the rules of procedure have been amended so that the High Court will meet the

expenses in all cases where there is no complainant or where the complainant is unable to bear the expense.

Finance.—Last but not the least is the question of finance. Soon after the formation of the Bar Council the Registrar of the High Court who had been acting till then as its Secretary handed over to the Chairman, Bar Council, a sum of Rs. 18,648-6-0 which represented the balance out of the amount received from advocates under section 8 (2) of the Act after defraying the election and other expenses of the Bar Council. Out of this amount a sum of Rs. 14,764-9-10 was, with the previous sanction of the High Court, invested in 5 per cent. 1945-55 Bonds of the face value of Rs. 14,000, and the balance was reserved for meeting the current expenses of the Bar Council.

The sources of income of the Bar Council under the Act are the fees payable to it in respect of (1) enrolment of advocates, (2) enjoyment of educational facilities provided, and (3) the right to appear at examinations held by the Bar Council. The difficulties in the way of the Bar Council providing educational facilities have already been referred to and therefore there are practically only two sources of income. With regard to the first of these, namely, the fee payable to the Bar Council at the time of enrolment, the Act provides that in the case of persons falling under section 8 (2) (*a*) of the Act the fee shall be Rs. 10 and in the case of others the fee is that fixed by the rules of the Bar Council. The Bar Council of Madras found itself at a disadvantage as against other Bar Councils in the matter of prescribing a fee to be paid to it on enrolment. While in all other provinces except Bengal the stamp fee realised by the Government for entry as an advocate is only Rs. 500, here in Madras it is Rs. 625. Even in Madras till 1922, the stamp fee was only Rs. 500 and it was then increased to Rs. 625. The Bar Council had to take this circumstance into account in fixing the fee payable to it in respect of every enrolment. It was hoped however that the Government could be persuaded to reduce the stamp fee to its old rate so that the Bar Council may make a corresponding increase in the fee payable to itself. But the Government was neither willing to reduce the stamp fee nor to forego a portion of it in favour of the Bar Council. In these circumstances the Bar Council had to keep the fee fixed at Rs. 50 only. If the income under this head be examined we find that in the year 1929-30 (July to July) there were 154 enrolments and in the next year 1930-31, the number fell to 120. The fall in the number is chiefly due to the fewer pleaders who applied for enrolment as advocates. From the number of pupils now studying in the chambers of advocates it seems probable that the number of enrolments in the next year may come up to 100 only. If it be remembered that the number of enrolments in 1929-30 was considerably increased by the great number of

pleaders who availed themselves of the Bar Council rules for enrolment, it is fairly clear the number of enrolments in future years is not likely to exceed 100 per year.

The other source of income is the surplus remaining out of the examination fees after meeting the expenses of the examination. Even under this head there has been a decrease in the surplus from that of the last year, as it is not now necessary that pleaders should pass the procedure examination in order to qualify themselves for enrolment. There were 121 candidates for the examination of October, 1929 and 114 for April, 1930, but there were only 63 candidates in October, 1930 and there are only 95 candidates for the examination to be held this month. Even if the income from these two heads be taken at their best they are only sufficient to meet the necessary expenses of the Bar Council. It will be hardly possible to save sufficient sum of money which may be made available for investment. With the increase in the volume of work done by the Bar Council more accommodation will be necessary for the office, and if a good library is to be maintained it will be desirable to have a separate building too. The Bar Council has to hold its examinations in one place, lectures in another place and the sittings of the Tribunal in a third place. With separate accommodation and a well-furnished library the Bar Council can with ease take up the work of legal education. Further the Bar Council should not have to depend for its ordinary expenses wholly upon the varying incomes of each year, but it is eminently desirable that it should have a funded capital sufficient to yield an income enough to meet its annual working expenses. The question is how to find the amounts necessary for these essential requisites. Something beyond the small savings that might be made annually is necessary. An attempt must be made not only to improve the income from the existing sources but other possible sources must be found.

RESOLUTIONS PASSED AT THE LAWYERS' CONFERENCE.

(1) That in the opinion of this Conference it is desirable that every complaint against an advocate should be lodged before the Bar Council and that every complaint to the High Court should be referred to the Bar Council before an enquiry is directed and a tribunal constituted.

(2) That in the opinion of this Conference it is desirable that the constitution of the tribunal for enquiry into cases of misconduct may be left to the Bar Council.

(3) That in the opinion of this Conference it is desirable that a finality should attach to the findings of the Bar Council Tribunal.

(4) That any aggrieved party may have the right to appeal to the Bar Council to review the findings of the Tribunal.

(5) That it is undesirable that the High Court should have any jurisdiction to interfere with the findings of the Tribunal or of the Bar Council as the case may be, at any rate in cases where the practitioner has been acquitted of misconduct.

(6) This Conference is of opinion that the District Judge should not be invested with any jurisdiction in regard to the enquiry in respect of an advocate's conduct.

(7) That in the interests of the profession and the public it is necessary to institute a faculty or society of advocates for the whole of the Province with authority to admit and enroll practitioners and with complete disciplinary jurisdiction over the practitioners.

(8) This Conference is of opinion that it is undesirable that proceedings should be initiated against an advocate under the disciplinary jurisdiction in cases involving a criminal offence which has no direct reference to the discharge of professional duties before the matter has been enquired into and tried by the ordinary criminal Courts.

(9) That in regard to the rule-making powers of the Bar Council, this Conference is of opinion that instead of the rules being subject to the previous sanction of the High Court, it is enough that the High Court is invested with a power of vetc in regard to any specified class of rules.

(10) That this Conference requests the Bar Council to bring to the notice of the Government and the members of the legislative bodies, the resolutions passed at this Conference and to urge upon them the necessity of undertaking legislation for remedying the defects in the Indian Bar Councils Act in the light of the resolutions passed at this Conference.

(11) This Conference appeals to the electorate to see that a proper and fair representation is secured to the mofussil Bar and to the members of the junior Bar at the coming election.

(12) In the opinion of this Conference the time has come for a thorough change in the constitution and composition of the High Court and the High Court Bench should be solely recruited from the ranks of the Bar and from such as have practised at the Bar; in any event there is absolutely no justification for perpetuating any rule of proportion or imposing any disability on a certain class of practitioners from occupying the office of Chief Justice.

(13) This Conference endorses the recommendations of the majority of the Services Committee of the Round Table Conference in regard to the elimination of the civilian element from the judiciary.

(14) In the opinion of the Conference, as a part of the general constitutional changes it is desirable to give immediate

effect to the principle of the separation of the Executive and Judiciary.

(15) That in the opinion of this Conference, it is necessary to have a Supreme Court as a part of the general federal structure for all India with power (*i*) to decide constitutional questions, (*ii*) to decide inter-State, inter-provincial, inter-State and provincial disputes with necessary sanctions attached to the judgments of the Tribunal, and (*iii*) to act as a Court of reference in respect of constitutional questions or the *ultra vires* and *intra vires* character of legislation arising in the course of litigation before the ordinary tribunals. That in order to ensure the proper functioning of the Supreme Court and in order that the Supreme Court might command the necessary respect and prestige, the Court should be so constituted as to secure among its *personnel,* lawyers of the highest eminence on the lines of Article 2 of the Statute relating to the Permanent Court of International Justice.

(16) This Conference is of opinion that Court-fee under the existing enactment is operating harshly on the litigant public; it is not in consonance with sound principles of administration of justice that the Court-fee should be treated as a special source of revenue to the State. This Conference urges upon the Government to undertake the immediate revision of the Court Fees Act so as at least to reduce the Court-fee to the level obtaining before 1922.

(17) This Conference is of opinion that Bar Associations should be formed in all mofussil centres where they do not exist at present and that all advocates of the Presidency should enrol themselves as members of such Associations.

(18) This Conference requests all First Grade Pleaders eligible to become advocates to take steps to get themselves enrolled as advocates.

(19) This Conference requests the Government to pay over to the Bar Council 50 per cent. of the stamp fee levied for entry as an advocate with a view to enable the Bar Council to satisfactorily discharge its statutory functions.

DISCUSSION ON RESOLUTIONS.

The main question which was discussed was the relative sphere and the functions of the Bar Council Tribunal, the Bar Council, and the High Court in regard to disciplinary proceedings against a practitioner. The discussion was initiated by Dewan Bahadur T. Rangachariar, Vice-Chairman of the Bar Council and Leader of the Opposition, Legislative Assembly. The following delegates took part in the discussion: Messrs. C. Brooke-Elliott, T. R Venkatarama Sastri, S. Varadachariar, P. Venkataramana Rao, K. V. Krishnaswami

Aiyar, Ganti Lakshmanna, V. Govindarajachari, K. Sanjiva Kamath, N. Thiruvengadatha Aiyangar of Kumbakonam, S. Rangaswami Aiyangar of Devakottah and K. Ramasesha Aiyar of Calicut. The general sense of the Conference was in favour of giving a finality to the findings of the Bar Council Tribunal. There was a strong feeling against the High Court being clothed with power to interfere with the finding of the Tribunal. The general sense of the Conference was also against disciplinary proceedings being taken against advocates in cases involving a criminal offence not arising in the discharge of one's professional duties before the ordinary Criminal Courts had been moved in the matter. The Conference was against an enquiry being conducted by District Judges into conduct of advocates.

In the evening, the Chairman and the members of the Bar Council gave a garden party to the advocates in the compound of the High Court. The party was well attended.

The Conference next discussed the question of the necessity of the amendment of the existing rules in regard to the procedure at the hearing before the Bar Tribunals. Mr. C. Brooke-Elliott opened the discussion and suggested simplifying of the procedure on the lines of the Solicitors Act in England. It was pointed by some of the members including Messrs. T. Rangachariar and P. Venkataramana Rao that a departure from the existing procedure might embarrass the practitioner in cases where there was something in the nature of a crime attributed to the practitioner in the course of the discharge of his professional duties. Mr. T. R. Venkatarama Sastriar expressed a leaning in favour of the simplification of the procedure. After some discussion it was decided to leave it to the Bar Council to consider feasibility and the desirability of a simplification of procedure in consultation with mofussil Bar Associations and placing suggestions before the High Court. Under the circumstances it was felt that there was no necessity to have any independent resolution on the subject.

Some discussion then ensued on the question of the necessity of a proper representation of the mofussil members on the Bar Council and the Conference passed resolution No. 11: "This Conference appeals to the electorate to see that a proper and fair representation is secured to the mofussil Bar and to the members of the junior Bar at the coming elections".

CONTROL OF LEGAL EDUCATION.

There was a lively discussion on the question as to the necessity and the desirability of the Bar Council as representing the profession organising legal studies and instituting its own tests for the purpose of judging the fitness of persons entering the profession. The general feeling was in favour of the profession directing the control of legal education with a view to test the

fitness of candidates for entering the profession. Some of the members pointed out the financial difficulties as also the inadvisability of reduplication of legal studies and legal examinations. Some others pointed out that there was no necessary conflict between the University giving an academic direction to the study of law and the profession and the Bar Council devoting more attention to the practical side of it. A large number of members took part in the discussion including the Chairman of the Conference, Messrs. B. Sitarama Rao, T. R. Venkatarama Sastri, K. V. Krishnaswami Aiyar, K. V. Sesha Aiyangar, T. R. Ramachandra Aiyar, President of the Advocates Association and T. Rangachariar. The following resolution was passed: "This Conference is of opinion that early steps should be taken for the Bar Council, as representing the profession, imparting legal education and instituting law examinations with a view to test the qualifications for entry into the profession." The Conference appointed a committee to devise ways and means for giving effect to the principles of the resolution. The Committee consists of the Advocate-General, the members of the Bar Council, Sir C. P. Ramaswami Aiyar and Messrs. V. V. Srinivasa Aiyangar, S. Varadachariar, P. Venkataramana Rao, K. V. Krishnaswami Aiyar, Ganti Lakshmanna, M. Kalidasu, V. Govindarajachari, P. Govinda Menon, K. Sanjiva Kamath, Kota Subba Rao, K. V. Ramaswami Aiyar, Prabhala Lakshmi Narasimham, and N. Thiruvengadatha Aiyangar.

Constitution of the High Court.

The next subject taken up was the constitution and composition of the High Court. The Conference was unanimously of opinion that the time had come for a thorough change in the constitution and composition of the High Court and that the High Court should be recruited entirely from the ranks of the Bar or such as had had an active practice at the Bar. The discussion was initiated by Mr. P. Venkataramana Rao, Government Pleader. In an elaborate speech, he went into the whole question at full length and referred to the judicial system obtaining in the Dominions, the Quebec resolutions and the British North America Act and pointed out that there was absolutely no justification why the High Courts in India should not be directly recruited from the Indian Bar having regard to the importance which it had attained to-day. Mr. S. Muthiah Mudaliar, ex-Minister, also strongly supported the resolution and pointed out that the Madras Government had already committed itself to the principle that old disabilities should be removed and that the rule of proportion laid down in the Government of India Act should be abolished.

Supreme Court for India.

The next subject taken up was the question of the constitution of the Supreme Court. Mr. T. R. Venkatarama Sastriar, ex-

Advocate-General, initiated the discussion. In the course of his speech he referred to the fact that even publicists who were originally not in favour of a federal constitution were for the institution of a Supreme Court as a part of the new constitution, and that the question had become a practical problem, after the deliberations at the Round Table Conference and the declaration by His Majesty's Government that the future constitution of India should be federal in its character. If ultimately the future constitution was resolved upon to be federal, the question of a Supreme Court with power to decide constitutional, inter-State or inter-provincial questions was a necessary concomitant of federalism.

There was some discussion on the question as to whether the Supreme Court should be a concurrent or exclusive Court of Appeal from the High Courts in the provinces and if the Supreme Court was to be a Court of Appeal, what exactly were the powers to be reserved to the Judicial Committee. One or two members expressed whether the discussion of the question of the Supreme Court was not premature. The Conference while clear on the necessity of having a Supreme Court to decide constitutional matters was not quite decided on the other question mooted. The opinion was unanimous on the question that unless the Supreme Court was manned by lawyers of highest eminence, the Court was not likely to function properly.

Appointment of Official Receivers.

Next, the question of the appointment of Official Receivers was taken up. There was a feeling at the Conference that there was much needed reform in regard to the institution of Official Receivers in the mofussil. The Conference requested the Bar Council to take up the question of Official Receivers and submit proposals to the Government.

The last question taken up was the question of permitting advocates in the mofussil to take apprentices. The President made an appeal to the members to defer the question for some time in view of the fact that at present the various mofussil stations were not equipped with good libraries and in view of the difficulty of instituting separate course of lectures in professional ethics and other matters in Madras and in the mofussil. The Conference accordingly deferred the consideration of the question to a future date.

President's Concluding Remarks.

The President in the course of his concluding remarks thanked the members for their cordial co-operation and for the response which the invitation of the Bar Council had received at the hands of the mofussil and the Madras associations. He said that he himself had very little experience of presiding at conferences and

but for the enthusiasm, the earnestness and the cordial co-operation of those assembled at the Conference, the Conference would not have been the success that it was. He also referred to the services of Mr. K. S. Krishnaswami Aiyangar and gratefully acknowledged the help which he had always received at the hands of his colleagues on the Bar Council a good number of whom were his respected elders.

Dewan Bahadur T. Rangachariar, on behalf of the Conference, conveyed his thanks to the President and paid an eloquent tribute to the address delivered by the Chairman and to the way in which he conducted the proceedings. The speaker humorously remarked that the President showed himself to be a benevolent autocrat imbued with a strong democratic spirit. The President was their official head and representative; but if it was a question of choosing a non-official head, there could be no doubt that the choice would fall on the official head. Mr. Rangachariar hoped that there would be frequent conferences of lawyers in the Presidency.

Mr. N. Thiruvengadatha Aiyangar also joined the previous speaker in thanking the President.

Mr. Prabhala Lakshmi Narasimham of Vizagapatam, while thanking the President, referred to the good work that the Bar Council had done and especially to the services done by Mr. K. S. Krishnaswami Aiyangar. Mr. Narayana Menon of Ottapalam associated himself with the previous speaker in thanking the Bar Council.